

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Action No. 3:17-cv-00462

WILLIAM BOWERS and TRACY  
BOWERS,

Plaintiffs,

vs.

CITIBANK, N.A. and ALLIANCEONE  
RECEIVABLES MANAGEMENT, INC.,

Defendants.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Citibank, N.A. (“Citibank”), files this Notice of Removal of the captioned action from the North Carolina General Court of Justice, Superior Court Division, Union County, where the action is now pending, to the United States District Court for the Western District of North Carolina, Charlotte Division, and shows the Court the following:

**PROCEDURAL HISTORY**

1. On June 26, 2017, Plaintiffs William Bowers and Tracy Bowers commenced this action by filing a Complaint in the North Carolina General Court of Justice, Superior Court Division, Union County (the “Complaint”).
2. Citibank received copies of the Summons and Complaint on July 5, 2017. True and correct copies of the Summons and Complaint are attached to this Notice as Exhibits A and B, respectively.

## **JURISDICTION**

3. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1332, because this action arises under the Constitution, laws, or treaties of the United States, and because the real parties in interest in this action are citizens of different states and the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs. Therefore, the action may be removed to this Court by Citibank pursuant to 28 U.S.C. § 1441(a).

### **Federal Question**

4. The Complaint alleges a right to recover damages for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* Compl. ¶¶ 54–60.

5. Therefore, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 as this civil action arises under the Constitution, laws, or treaties of the United States.

### **Diversity of Citizenship**

6. Upon information and belief, Plaintiffs are citizens of the State of North Carolina. Compl. ¶¶ 4–5.

7. Citibank is a national bank located in Sioux Falls, South Dakota. For purposes of diversity jurisdiction, a national bank, like Citibank, is deemed a citizen of the state where the national bank maintains its main office. *See* 28 U.S.C. § 1348 (national banking associations are “deemed citizens of the States in which they are respectively located”); *accord Wachovia Bank v. Schmidt*, 546 U.S. 303 (2006). Accordingly, Citibank is a citizen of the state of South Dakota for purposes of 28 U.S.C. § 1332.

8. Defendant AllianceOne Receivables Management, Inc., (“AllianceOne”) is a corporation incorporated under the laws of the State of Delaware with its principal place of business in the State of Pennsylvania. AllianceOne is therefore a citizen of the States of

Delaware and Pennsylvania for purposes of determining citizenship under 28 U.S.C. § 1332. 28 U.S.C. § 1332(c)(1)

9. Accordingly, complete diversity of citizenship exists.

**Amount in Controversy**

10. The Complaint alleges that “Defendants have called Plaintiffs more than one-hundred (100) times” in violation of N.C. Gen. Stat. §§ 58-70-90 and 75-50 and 47 U.S.C. § 227. *See* Compl. ¶ 28 & Prayer for Relief.

11. Plaintiffs request both actual damages and “\$4000 in statutory damages per violation”<sup>1</sup> of N.C. Gen. Stat. §§ 58-70-90 and 75-50 and “\$500.00 in statutory damages per violation and \$1,500.00 for each willful or knowing violation pursuant to 47 U.S.C. § 227(b)(3).” This allegation alone suggests that Plaintiffs seek to recover as much as \$4,000.00 in statutory damages based on their claims under N.C. Gen. Stat. §§ 58-70-90 and 75-50 and \$150,000 for their claims under 47 U.S.C. § 227.

12. Plaintiffs further seek to recover reasonable attorneys’ fees and costs pursuant to N.C. Gen. Stat. §§ 75-16 and 75-56. Compl. Prayer for Relief; *see Cole v. Captain D’s, LLC*, No. 5:08-cv-21, 2008 WL 4104577, at \*3 (W.D.N.C. Aug. 29, 2008) (citing *Missouri State Life Ins. v. Jones*, 290 U.S. 199, 202 (1933) for the proposition that attorneys’ fees may be considered in determining the amount in controversy).

13. Plaintiffs also seek compensation for emotional distress along with punitive damages. Compl. ¶ 43, 53 & Prayer for Relief. *See Woodward v. Newcourt Comm. Fin. Corp.*, 60 F. Supp. 2d 530, 532 (D.S.C. 1999) (“A claim for punitive damages alone makes it virtually impossible to say that the claim is for less than the jurisdictional amount.”).

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<sup>1</sup> Citibank does not concede that this measure of damages is recoverable and does not intend to waive any defenses by virtue of this Notice.

14. Therefore, it is apparent from the face of the Complaint that, based on Plaintiff's allegations (which Citibank denies), the amount in controversy in this case exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1446(c)(2) ("If removal of a civil action is sought on the basis of jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy . . .").

#### **TIMELINESS OF REMOVAL**

15. This Notice of Removal is filed within thirty days of the receipt by Citibank of a copy of the initial pleading setting forth a claim for relief upon which this action is based. *See* 28 U.S.C. § 1446(b).

16. Accordingly, removal of this action is timely.

#### **VENUE AND NOTICE**

17. Venue is proper in this Court because the North Carolina General Court of Justice, Superior Court Division, Union County, is located within the district and division of the United States District Court for the Western District of North Carolina, Charlotte Division.

18. As indicated by the attached Certificate of Service, a copy of this Notice will be served on Plaintiffs. A copy of this Notice also will be filed with the Clerk of Union County Superior Court.

19. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Citibank in this action are attached to this Notice as exhibits.

20. Pursuant to 28 U.S.C. § 1446(b)(2)(A), AllianceOne has consented to the removal of this action. AllianceOne's consent is attached to this Notice as Exhibit C.

WHEREFORE, Defendant Citibank, N.A., respectfully requests that this Court remove this action from the North Carolina General Court of Justice, Superior Court Division, Union

County, where it is now pending, to the United States District Court for the Western District of North Carolina, Charlotte Division.

This, the 4th day of August, 2017.

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was duly served when a copy of the same was deposited into the United States Mail, first-class postage prepaid, addressed as follows:

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This, the 4th day of August, 2017.

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